

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate  
Suspension of the Day Care License of  
Samantha Stone

In the Matter of the Maltreatment  
Determination and Revocation of the  
License of Samantha Stone to Provide  
Child Care

**ORDER ON THE RESPONDENT'S  
APPLICATION FOR ATTORNEY'S  
FEES AND COSTS**

The above-entitled matters are now pending before Chief Administrative Law Judge Raymond R. Krause and Assistant Chief Administrative Law Judge Bruce H. Johnson (the ALJs) on the Licensee's application for attorneys' fees and costs under the Minnesota Equal Access to Justice Act (MEAJA)<sup>1</sup>. The Licensee filed her motion on May 13, 2009. The Department of Human Services (Department or DHS) filed its objection to the application<sup>2</sup> on May 27, 2009. The Licensee filed a reply on May 28, 2009, and the record closed on that date.

William G. Clelland, Attorney at Law, represented the Licensee, Samantha Stone, and Cynthia B. Jahnke, Assistant Attorney General, represented the Minnesota Department of Human Services (the Department).

Based upon the memoranda of the parties and for the reasons set forth in the attached memorandum, the undersigned Administrative Law Judges make the following:

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<sup>1</sup> Minn. Stat. § 15.471, *et seq.*

<sup>2</sup> Objection of the Minnesota Department of Human Services to Application for Award of Fees and Expenses (Department's Objections).

## **ORDER**

For the reasons set forth in the Memorandum that follows, the Licensee's Application for Attorneys Fees and Costs is DENIED.

Dated: June 11, 2009

s/Raymond R. Krause

RAYMOND R. KRAUSE

Chief Administrative Law Judge

s/Bruce H. Johnson

BRUCE H. JOHNSON

Assistant Chief Administrative Law Judge

## **MEMORANDUM**

### **I. Prior Proceedings**

The Licensee's application for attorney's fees and costs arises from two separate, but related, contested case proceedings. On February 12, 2008, the Department issued an order temporarily suspending the Licensee's family child care license. The Licensee requested an administrative appeal of that order of temporary immediate suspension, and that appeal was considered in OAH Docket No. 4-0903-19490-2. After an evidentiary hearing, the ALJ issued a report on May 2, 2008, recommending that the Commissioner dismiss the order of temporary immediate suspension. However, by final order issued on May 30, 2008, the Commissioner rejected the ALJ's recommendation and affirmed the temporary immediate suspension of the Licensee's family child care license pending the outcome of associated license sanction proceedings. Thereafter, the Licensee appealed the Commissioner's May 30, 2008, order on certiorari appeal to the Minnesota Court of Appeals.

While the Licensee's judicial appeal of the order of temporary immediate suspension was pending, the Department continued consideration of sanctions against the Licensee's child care license. On August 28, 2008, the Department issued an Order of Revocation, revoking the Licensee's child care license. Thereafter, Licensee also requested an administrative appeal of that revocation order, and that appeal was considered in OAH Docket No. 2-0903-19957-2. After a separate evidentiary hearing, a second ALJ issued a report on January 16, 2009, recommending that the Commissioner reverse the order of revocation. On April 28, 2009, the Court of Appeals reversed the Commissioner's order affirming the temporary immediate suspension of the Licensee's

child care license. On May 6, 2006, the Commissioner adopted the ALJ's findings of fact, conclusions, and recommendation and reversed the earlier order of revocation.

## **II. The Licensee's Application for Attorney's Fees and Costs.**

### **A. Positions of the Parties**

On May 13, 2009, the Licensee filed an application under the MEAJA, seeking an award of attorney's fees of \$22,708.00, plus costs in the amount of \$1,881.70.<sup>3</sup> In support of her application, she asserts she was a "party" to both contested case proceedings within the meaning of Minn. Stat. § 15.471, subd. 6; that she prevailed in both of the proceedings as required by Minn. Stat. § 15.472(a); and that Department's positions in both of those proceedings was not substantially justified, within the meaning of Minn. Stat. § 15.471, subd. 8.

On May 27, 2009, the Department filed objections to the Licensee's application raising three defenses: first, that the Licensee did not have standing as either a qualifying small business or as a principal in a qualifying small business; second, that as a service provider licensed by the Department, the Licensee was statutorily excluded from recovery under the MEAJA; and third, that she had failed to show that the Department's positions were not substantially justified in either contested case proceeding.

On May 28, 2009, the Licensee filed a reply to the Department's objections. She first asserted that she did meet the small business qualification of the MEAJA and requested an evidentiary hearing on that issue. Second, she argued that the licensing exclusion set forth in Minn. Stat. § 15.471, subd. 6(c) was not broad enough to include license revocations or suspensions.

### **B. Applicable law.**

The MEAJA authorizes an award of attorney fees and costs to a prevailing party in contested cases. However, because the Act is a limited waiver of sovereign immunity, the language of the act must be strictly construed.<sup>4</sup> "Party" is defined in a restrictive fashion in the Act to include only small businesses (those with not more than 500 employees and annual revenues not over seven million dollars) and partners, officers, shareholders, members, or owners of such entities.<sup>5</sup> Recovery is available only against the state,<sup>6</sup> and only in cases where the state's position is represented by counsel and is not substantially justified.<sup>7</sup> The term "substantially justified" is defined

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<sup>3</sup> Minn. Stat. §§ 15.471—15.474 (2008).

<sup>4</sup> *Donovan Contracting of St. Cloud, Inc. v. Minnesota Dept. of Transp.*, 469 N.W.2d 718 (Minn. App. 1991).

<sup>5</sup> Minn. Stat. § 15.471, subd. 6.

<sup>6</sup> Minn. Stat. § 15.472; *see also City of Mankato v. Mahoney*, 542 N.W.2d 689 (Minn. App. 1996).

<sup>7</sup> Minn. Stat. § 15.472: *see also Donovan Contracting*, *supra* note 1, 469 N.W.2d 718.

as: “the state’s position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation or contested case proceeding.”<sup>8</sup>

**C. The Licensee is statutorily excluded from the class of qualified applicants.**

Moreover, Minn. Stat. § 15.471, subd. 6(c) expressly excludes the following individuals from the class of qualified applicants:

(c) ‘Party’ does not include a person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services.

In effect, the Licensee argues that the terms “licensure” and “licensing” should be read in the narrow senses of those words—that is, referring only to “the granting of licenses (as for professional practice) in accordance with established standards,”<sup>9</sup> and not to the suspending or revoking of licenses. But the language of the statute and its context do not support that narrow interpretation.

First of all, the word “licensure” in the first clause of Minn. Stat. § 15.471, subd. 6(c), does not refer to the process of granting a license. Rather, it is used to describe a particular class of excluded “parties,” that is, individuals to whom the Department of Human Services had already granted a license and who subsequently were providing services under that license. Since the statute expressly requires that an excluded party must be someone who already has a license, it would make no sense to limit the exclusion to cases only involving the granting of licenses. In ascertaining legislative intent, one must presume that the legislature did not intend an interpretation that produces an unreasonable result.<sup>10</sup>

Second, a statute must be construed, if possible, to give effect to all its provisions.<sup>11</sup> The remaining language of subdivision 6(c) even more clearly indicates that the legislature intended the exclusion to apply to all aspects of a DHS licensure program. It expressly expands the scope of the term “licensing” beyond the mere granting of licenses to also include any “matter which involves the licensing ..., procedures, or methodology applicable to those services.” “Involve” means “to relate closely to.”<sup>12</sup> Contested cases relating to the propriety of suspension or revocation orders are matters that “involve the licensing” of family child care services and therefore fall within the exclusion in subdivision 6(c).

<sup>8</sup> Minn. Stat. § 15.471, subd. 8.

<sup>9</sup> MERRIAM-WEBSTER ONLINE DICTIONARY (2009 ed.)

<sup>10</sup> Minn. Stat. § 645.17(1); *See also Spaeth v. City of Plymouth*, 344 N.W.2d 815, 822 (Minn. 1984).

<sup>11</sup> Minn. Stat. §

<sup>12</sup> MERRIAM-WEBSTER ONLINE DICTIONARY (2009 ed.)

For the reasons set forth above, the ALJs conclude that, as a matter of law, the Licensee is statutorily excluded from the class of persons who may seek recovery of attorneys' fees and costs under the MEAJA. It is therefore unnecessary to consider whether the Licensee is a qualified small business owner or whether the Department's positions in the two contested case proceeding were substantially justified.

**R. R. K.**

**B. H. J.**